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10/757,100	01/14/2004	Robin Plante	R0136.70017US00	2926

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EXAMINER
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NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/757,100

**Applicant(s)**

PLANTE, ROBIN

**Examiner**

Trinh T Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/30/04 & 11/4/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 20, 24-26, 30, 33 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21-23, 27-29, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/14/04 & 6/11/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election (filed on 7/30/04 and 11/4/04) of Species I, Invention I, and Invention IA, which are directed to claims 1-19, 21-23, 27-29, 31, 32 and 34 is acknowledged.
2. Claims 20, 24-26, 30, 33 and 35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. The traversal is on the ground(s) that the species are not distinct. This is not found persuasive because applicant has not submitted evidence or identified such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 1/14/04 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "46" has been used to designate both a shallow peripheral portion and the elevated portion. Corrected drawing sheets in compliance with 37 CFR

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1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12-17, 19, 21-23, 27-29, 31, 32 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, the phrase "said means including the surface for directing water from the surface into the bowl" is confusing because it is unclear as to what "said means" is referred to (i.e. "means enabling water to flow" or "pump means").

In claim 22, the phrase "second passage" is confusing and unclear since there is no first passage.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 11-15, 17, 19, 21 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Northrop et al. (US 6,460,483) (please see Figure 2 of Northrop et al. attached at the end of this Office Action for further explanation).

For claim 11, Brandon et al. disclose a device for providing drinking water to pets comprising: a base (20) having a tank support and a drinking bowl (26), a water chamber (32) in the base having an inlet (Figure 2) from the bowl, a closed tank (62) disposed on the support and a duct (44, 54, 46, 60) extending from the chamber toward the top of the outer surface of the tank, a pump (56) in the base connected to the duct, a gutter (22) about the lower portion of the tank, a passage (70) in the tank communicating with the chamber and a valve (63), means (68) connected to the valve, and a sleeve (70, 82) defining the passage and extending into the chamber with the lower portion of the sleeve positioned to be fully submerged in water in the chamber.

For claim 12, as best understood, Brandon et al. further disclose a device for providing drinking water to pets comprising: a bowl (26), a water circulation system including a water chamber (32) separate from the bowl and means (Figure 2) enabling water to flow from the bowl to the chamber, a reserve water tank (62, 42), and pump means (56) in the system, said means (24, 28, 30) including the surface.

For claim 13, Brandon et al. further disclose the tank includes a dome (74) and a removable bottom cover (68).

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For claim 14, Brandon et al. further disclose a handle (76) is connected to the dome.

For claim 15, Brandon et al. further the handle provides a support.

For claim 17, Brandon et al. further disclose the pump means is in continuous operation when the tank is in the system.

For claim 19, Brandon et al. further disclose the circulation system includes a duct (60, 44, 54, 46) connected to the pump and extending through the water tank.

For claim 21, Brandon et al. further disclose a drinking bowl interposed in the flow of water between the tank surface and the chamber from which pets can drink water as an alternative from lapping water from the tank surface.

For claim 34, Brandon et al. further disclose a retainer (78) maintains the dome and cover together.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Simon (US 4,840,143).

Northrop et al. disclose a pet drinking fountain comprising:  
a base (20) and a water supply tank (42) having a closed top (74) disposed on the base and extending upwardly therefrom, a water collection area (32) in the base disposed

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beneath the tank, a water pump (56) disposed in the collection area and connected to a duct (60, 44, 54, 46), a discharge passage (28, 30) in the lower portion of the tank communicating with the base, and a drinking container (26) in communication with the channel and the collection area from which pets may drink water directed to it from the channel.

Northrop et al. disclose most of the claimed invention except for a channel in the base surrounding the bottom portion of the tank.

Simon teaches a similar pet drinking fountain as that of Northrop et al. in which Simon's fountain having a channel (the channel is located below reference no. 28 in Figure 3) in the base (20) surrounding the bottom portion of the tank (50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. so as to include a channel in the base surrounding the bottom portion of the tank, in a similar manner as taught in Simon, so that the tank can be securely attached onto the base.

For claim 2, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose a filter (50). With respect to the location of the filter, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the filter where it is needed, since it has been held that rearranging parts of an invention involves only routine skill in the art.

For claim 3, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the duct extends from the pump upwardly through the tank to the outer surface of the upper portion thereof.

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For claim 4, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose a portion of the water discharged at the top of the duct flows directly into the drinking container.

For claim 5, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the pump is continuously driven by an electric motor.

For claim 6, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the tank is dome-shaped and has a smooth outer surface allowing the water to flow smoothly down toward the base.

For claim 7, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the drinking container is disposed to the side of the tank.

For claim 10, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose access is provided for the animal to the surface of the tank enabling the animal to lap water flowing down the surface thereof or in the drinking container.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Simon (US 4,840,143), and further in view of Clark (US 5,259,336).

As described above, Northrop et al. as modified by Simon disclose most of the claimed invention except for a food dish is connected to the base and the food dish is adjacent the drinking container.

Clark teaches a similar pet drinking fountain as that of Northrop et al. as modified by Simon in which Clark's fountain having a food dish (50 or 52) is connected to the base and the food dish is adjacent the drinking container (20). It would have been



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obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. as modified by Simon so as to include a food dish adjacent to the drinking container, in a similar manner as taught in Clark, so as to provide a food dish for the animal.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483).

As described above, Northrop et al. disclose most of the claimed invention except for the tank includes valve means for enabling water to flow from the tank to the chamber, means responsive to positioning the tank in the system for opening the valve and means for controlling pressure in the tank for preventing water in the tank flowing out the valve means to the chamber when the valve means is open.

It is noted that Northrop et al. does disclose the use of valve assembly (64, 66, 68, 78, 80, 86) for controlling the ingress and/or egress of water in the tank, which is considered as a valve means functional equivalent to the valve means as claimed by the applicant. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use either Northrop et al.'s valve assembly or applicant's valve means, since to do so would merely replace one old and well known valve means with another art equivalent old and well known valve means so that the ingress and/or egress of water can be controlled more efficiently. Furthermore, it appears that the invention would perform equally well with Northrop et al.'s valve assembly.

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13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Burns et al. (US 5,799,609).

As described above, Northrop et al. disclose most of the claimed invention except for the duct extends through the tank.

Burns et al. teach a similar pet drinking fountain as that of Northrop et al. in which Burns et al.'s fountain having a duct (66, 70) extends through the tank (58, 60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. so as to include a duct extends through the tank, in a similar manner as taught in Burns et al., so as to provide a more efficiently way for the water to travel from one place to another.

#### ***Allowable Subject Matter***

14. Claims 22, 23, 27-29, 31, and 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (703) 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen  
Patent Ex.  
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FIG. 2

